

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7610

Petition of Central Vermont Public Service Corporation, )  
Green Mountain Power Corporation, Vermont Electric )  
Cooperative, Inc., Vermont Transco LLC, and )  
Washington Electric Cooperative, Inc. pursuant to )  
30 V.S.A. § 108(a), for authority to pledge a certain )  
portion of their assets in order to use Department of )  
Energy Smart Grid Investment Grant ("SGIG") awards, )  
or, in the alternative, a determination that Section 29 of )  
the SGIG Agreement permits seeking such § 108 )  
approval following execution of the SGIG agreement )

Order entered: 4/13/2010

**I. INTRODUCTION**

On April 9, 2010, Central Vermont Public Service Corporation, Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., Vermont Transco LLC, and Washington Electric Cooperative, Inc. (collectively, "Joint Petitioners"), filed a petition (the "Petition") with the Vermont Public Service Board ("Board") for approval pursuant to 30 V.S.A. § 108(a) to pledge their corporate assets in accordance with a provision in a proposed grant agreement with the United States Department of Energy ("DOE").<sup>1</sup> The Petition was supported by the prefiled testimony of a panel consisting of Dawn D. Bugbee, Todd Kowalczyk, and Thad Omand, and by accompanying exhibits.

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1. The Petition requests that, in the alternative, the Board determine that prior approval under Section 108(a) is not required for the proposed grant agreement.

On April 12, 2010, the Vermont Department of Public Service ("Department") submitted a letter recommending that the Board approve the petition as consistent with the general good of the state without further investigation or hearing.

Based upon the evidence of record and the Department's letter of April 12, 2010, the Board hereby issues the following findings and conclusion.

## **II. FINDINGS**

1. The Joint Petitioners are companies as defined by Section 201 of Title 30, Vermont Statutes Annotated, and as such are subject to the Board's jurisdiction pursuant to Sections 108 and 203 of Title 30. Pet. at 1.
2. The Joint Petitioners own and operate various electric distribution, subtransmission, and transmission systems serving the State of Vermont. Pet. at 1.
3. The Joint Petitioners have created and are in the process of implementing the eEnergy Vermont project (the "Project") that will deploy advanced metering, new customer enhancements, grid automation and security technologies statewide. Panel pf. at 4.
4. The Project consists of \$138 million in improvements to the Vermont electric transmission and distribution system. The Project involves twenty Vermont electric distribution utilities, Efficiency Vermont and Vermont Transco LLC, and will deploy advanced metering, new customer enhancements, grid automation and security technologies statewide. Panel pf. at 4.
5. Half of the funding for the Project will be paid by a grant from the DOE under the American Recovery and Reinvestment Act ("ARRA" or "Stimulus"). Panel pf. at 4.

6. In order to receive such ARRA funding, the Project participants must enter into a "funding" agreement with the DOE. Vermont Transco LLC ("Transco"), the lead participant, will enter into the Smart Grid Investment Grant ("SGIG") Agreement with the DOE. Transco will then enter into a Governance Agreement with the other Project participants (referred to as "sub-recipients" under the SGIG Agreement) in order to apply the terms and conditions of the SGIG Agreement to the sub-recipients. Panel pf. at 4.

7. One provision of the SGIG Agreement will require that the DOE maintain an interest in all Project property, both real property and equipment, purchased with ARRA funds (the "Federal Security Interest"). This Federal Security Interest requires that the Project property be used for Project purposes or be disposed of consistent with 10 C.F.R. § 600.321(f). Panel pf. at 5.

8. The Federal Security Interest is similar to a mortgage or Uniform Commercial Code security interest in such property in that the obligations under the SGIG Agreement are secured by the federal government taking an interest in the Project property. Pursuant to Section 108(a), Joint Petitioners are required to get Board approval prior to mortgaging or pledging any of their corporate property. Panel pf. at 5.

9. The DOE grant funds will cover fifty percent of the estimated \$138 million cost of the Project. The Federal Security Interest will apply only to real property and equipment with a per unit value of more than \$5,000. Panel pf. at 4, 5.

10. For the equipment covered by the Federal Security Interest, the Interest will be extinguished when the per unit value falls below \$5,000. Panel pf. at 5.

11. The Joint Petitioners have requested expedited review of the Petition because the DOE has scheduled the date of execution of the SGIG Agreement for April 14, 2010. Pet. at 3.

12. Section 29 of the SGIG Agreement provides that if necessary regulatory approvals are rescinded, the parties have the ability to re-open negotiations and try to reform the SGIG Agreement, modify the Project, or terminate the Agreement. Pursuant to this provision, the Board may issue expedited approval prior to the execution of the SGIG Agreement and then withdraw such approval at a later date if it finds that the Federal Security Interest is not in the general good of the State. Pet. at 3.

13. The pledging of the Joint Petitioners' assets as discussed above is consistent with the general good of the State. By signing the SGIG Agreement and Governance Agreement, the Joint Petitioners will be accessing federal grant funds that will be critical in implementing the eEnergy Vermont project. Half of the cost of the Project will be paid for with funds that are not derived from Vermont ratepayers. The Project will deliver system improvements that empower customers to reduce their environmental impacts, energy use and electric bills through smarter energy consumption. Additionally, the SGIG Agreement's Federal Security Interest provision should have no material impact on Joint Petitioners' ability to secure future financing. Panel pf. at 6.

### **III. DISCUSSION AND CONCLUSION**

Because of the limited time available to review the Petition in advance of the April 14, 2010, date for execution of the SGIG Agreement, the Joint Petitioners request that the Board "issue expedited approval prior to April 14th, which could later be rescinded if, after a reasonable opportunity for the Board's review, it determines that the Federal Security Interest is not in the general good of the state . . . ." <sup>2</sup> On that basis, the Board concludes, from the findings and the record evidence, that approval of the Petition, as described above, will be

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2. Pet. at 4.

consistent with the general good of the State. However, in light of the extremely expedited review of the Petition, and as proposed by the Joint Petitioners, the Board may withdraw such approval at a later date if it finds that the Federal Security Interest is not in the general good of the State.

#### **IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The request for approval of the pledging of corporate assets as set forth in the Joint Petitioners' Petition in this docket, and as described in the Findings, is consistent with the general good of the State of Vermont.

2. Pursuant to 30 V.S.A. § 108(a), consent is hereby given to Joint Petitioners to pledge their corporate assets in furtherance of the eEnergy Vermont project, in order to enter the proposed Smart Grid Investment Grant ("SGIG") Agreement with the United States Department of Energy, according to terms consistent with the Findings above.

3. This Order is subject to additional review and, should the Vermont Public Service Board ("Board") conclude that the pledge of the Joint Petitioners' corporate assets is not in general good of the State, the Board may withdraw such approval at a later date.

4. Upon request, the Joint Petitioners shall provide the Board and the Vermont Department of Public Service ("Department") with a complete set of final executed documents when they are available.

5. This Order does not constitute approval for Joint Petitioners of the resulting capital structure or of any particular capital or operating expenditure that may be implemented with

the proceeds from SGIG Agreement contemplated in the Petition in this docket. Nothing in this approval shall preclude the Department or any other party, or the Board, from reviewing or challenging such expenditures or resulting capital structure.

Dated at Montpelier, Vermont, this 13<sup>th</sup> day of April, 2010.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
	)	

OFFICE OF THE CLERK

FILED: April 13, 2010

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*